

The question thus arises as to whether the words "whom he may adopt" mean "children actually adopted by Tan Kek Tiang personally" or whether its meaning can be stretched to include children adopted on his behalf i.e. to read "his adopted children."

The learned Chief Justice decided that on a strict interpretation of the clause in question a child who was what one might call vicariously adopted in these circumstances could not take under the will and it is against this decision that the appeal has been lodged in this Court. The point is not without difficulty as the Courts are naturally disinclined to intervene with the expressed wishes of the testator unless an inconsistency is palpably obvious. Counsel for the respondent points out, moreover, that this particular testator may well have meant just exactly what he said and that he intended to exclude all children not adopted personally by his nephew.

As against this, however, it must be remembered that in 1896 when the will was executed, Singapore was a very different place from what it is to-day, and it seems certain that the testator would have been even less inclined to depart from traditional Chinese custom than would a Chinese testator to-day. We are told, moreover, and it is not disputed that from time immemorial it has been a recognised practice of Chinese nationals to adopt children on their son's behalf—even at times, after the death of their son, and that such adoption, according to Chinese custom, is perfectly legal and valid. It must also be remembered that this will was drawn in the English language and before it was executed by the testator (writing in Chinese) its provisions were translated into Hokkien by an interpreter. In these circumstances it seems far more probable that a genuine mistake arose in interpretation than that the testator deliberately set out to exclude a child adopted in a perfectly legal and valid manner which was, and is, fully recognised by the community of which he was a member.

In my opinion, moreover, if the testator had intended to commit a flagrant breach of long-established Chinese custom he would have made such intention very clear. Could he so casually, and in such slipshod language, have disinherited a class of persons which, according to his customs, was fully entitled to inherit? I do not think so—and although I have had the benefit of reading the learned judgments of the President and my brother Storr, J., I should have allowed this appeal.

Appeal dismissed.

HAJI YUSOF BIN KEROMO

v.

PUBLIC PROSECUTOR.

[App. Crim. Juris. (Buhagiar, J.) November 8, 1952]

[J. B. — Criminal Appeal No. 18 of 1952]

Penal Code, s. 193 — Contradictory statements made in course of police investigation and at trial — Where accused retracts his previous false statements after caution by trial Judge.

The appellant had made certain statements in the course of police investigation, and before the Sessions Court he denied having made such statements. He was charged under section 191 of the Penal Code punishable under section 193.

Held: (1) The charge against the appellant was that he said in the Sessions Court that he did not make certain statements in the course of police investigations when in fact he did so and it was immaterial whether or not such statements were true; (2) the fact that a statement had not been proved formally in a proceeding during which a witness is alleged to have made a false statement is not a bar to proving that statement in a subsequent proceeding; (3) where a witness, having made a false statement, is cautioned by the trial Judge and is informed of various circumstances which seem to establish the falsehood of that statement, and the witness after such caution acknowledges that his earlier statement was false and corrects it, it is not desirable to subject such witness to prosecution for perjury; but where the witness retracts his false statements, made on a solemn oath in a witness box, only when he discovers that his fraud has been detected, no Court can infer from the subsequent correction or retraction that there was no intention to give false evidence.

Cases referred to:—

- (1) *Muthusamy v. Public Prosecutor* (1948) M.L.J. 57.
- (2) *Jusoh bin Awang v. Public Prosecutor* (1950) M.L.J. 69.

CRIMINAL APPEAL.

M. Ismail for the appellant.

M. Suffian (D.P.P.) for the respondent.

Cur. Adv. Vult.

Buhagiar, J.:—This is an appeal from the conviction and sentence of the learned President of the Sessions Court at Pontian Kechil. The facts in this case are briefly as follows:

Some time in March, 1951, a Chinese named Lee Kin Guan was arrested for illegal sale of rubber. In the course of the investigation, the appellant was interviewed by Police Sergeant 2013, Bachik bin Mohamed, to whom the appellant made a statement; this statement was taken down in writing by the said Police Sergeant. The appellant was called as a witness for the prosecution in the trial of the said Lee Kin Guan (Pontian Magistrate's Court Arrest Case No. 51 of 1951) and at that trial the appellant gave the following evidence:—

"I did not tell the Sergeant that a Chinese came to my house and asked whether I had rubber to sell. I did not tell I had given him rubber; I did not tell the Chinese to take the rubber to the shop and ask him to wait at the shop. I did not tell that the weight was one picul and I received \$190 for the rubber."

The prosecution alleged that the appellant had made such statements to the Police Sergeant and he was charged with an offence against section 191 of the Penal Code and punishable under section 193 of the Penal Code. In the course of the trial before the Sessions Court, Police Sergeant Bachik bin Mohamed gave evidence to the effect that the appellant had made a statement to him and he produced a copy thereof; this statement contained the following passage:—

"About 10.30 a.m. 8-3-51 I was at home at Parit Haji Abdul Rahman. A Chinese named Lee Kim Guan came with a bicycle but without a datching. He asked me if I was selling any rubber or not. I said Yes. I then took rubber, I don't know how many pieces or sheets and gave them to Lee Kim Guan without weighing it, as there was no datching. Then Lee Kim Guan immediately took the rubber and put it on his bicycle and took it to his shop at Parit Api². I followed him from behind. When we reached his shop he weighed the rubber weighing one picul at the price of \$1.90 per katti, total \$190. He paid me the price of the rubber and I returned home."

This statement was admitted in evidence. The learned President found the accused guilty, convicted him and sentenced him to 18 months rigorous imprisonment.

The main ground of appeal is that the record in Pontian Magistrate's Court Arrest Case No. 51 of 1951 did not disclose that the appellant had committed the offence of giving false evidence in a judicial proceeding; the alleged statement made by the appellant to the Police Sergeant had not been formally proved and admitted in evidence in the Pontian Arrest Case No. 51 of 1951; the learned President was wrong in the trial of the appellant as the said statement does not form part of the record of the Pontian Arrest Case No. 51 of 1951.

Mr. Ismail, counsel for the appellant, submitted that as the said statement was not made part of the record of the said case, the learned President was wrong in admitting it as evidence at the trial of the appellant. Mr. Ismail referred to the case of *Muthusamy v. Public Prosecutor*⁽¹⁾, followed in *Jusoh bin Awang v. Public Prosecutor*⁽²⁾. That case deals with the procedure to be followed in cases where it is desired to impeach the credibility of a witness by the production of a former statement made by that witness; in such cases the document must be formally proved by calling the writer or, if he is not available, by proving in some other way that the witness did make the statement. That case is not authority for the proposition that where a witness, having made a statement to the police in the course of a police investigation, and in giving evidence before a Court he denies having made that statement, that witness cannot be charged

with perjury in a subsequent proceeding unless his credibility had been attacked in the former trial and the statement had been formally proved. The fact that a statement has not been formally proved in a proceeding during which a witness is alleged to have made a false statement is not a bar to proving that statement in a subsequent proceeding. The statement may be used and admitted as evidence under the provisions of sub-section (iv) of section 113 of the Criminal Procedure Code. During the trial of the appellant the statement was formally proved by the evidence of Police Sergeant Bachik bin Mohamed who stated that he took a statement from the appellant and who produced a copy thereof.

Mr. Ismail also submitted that it had not been proved that the appellant had given false evidence in a judicial proceeding. He argued that there are two statements made by the appellant, one to the Police Sergeant and one before the Sessions Court; the statement made before the Sessions Court was under oath; it is not known which of the two statements contains the truth.

This argument is based on the assumption that the subject of the charge is the contents of the statements. The subject of the charge, however, is the fact that before the Sessions Court the appellant denied having made certain statements to the Police Sergeant when in fact he had made such statement. The charge against the appellant is that he said that he did not tell the Sergeant that a Chinese went to his house and asked him whether he had rubber to sell when in fact he did tell this to the Sergeant; it is immaterial whether or not it is true that a Chinese went to the appellant's house and asked him whether he had rubber to sell.

Mr. Ismail also submitted that the evidence given by the appellant in Pontian Arrest Case No. 51 of 1951 must be read as a whole. In the record of that case, there appears the following note after that part of the deposition which forms the subject of this charge: "Now witness says I do not know whether I said about this or not; it was long ago". It was submitted that the appellant corrected his previous statement in the same deposition. Where a witness, having made a false statement, is cautioned by the trial Judge and is informed of various circumstances which seem to establish the falsehood of that statement, and the witness after such caution acknowledges that his earlier statement was false and corrects it, it is not desirable to subject such witness to a prosecution for perjury; but where the witness retracts his false statements, made on a solemn oath in a witness-box, only when he discovers that his fraud has been detected, no Court can infer from the subsequent correction or

retraction that there was no intention to give false evidence. I do not consider that the appellant in this case retracted his previous statement; he simply made an evasive statement relying on his alleged lack of memory, and in the circumstances the presumption that he made the incorrect statement in good faith cannot be raised in his favour.

For the above reasons, I dismiss the appeal. With regard to the sentence, I do not consider that the sentence of 18 months rigorous imprisonment by the learned President is excessive; the maximum punishment for this offence is seven years.

Appeal dismissed.

SEOW SENG CHOON

v.

YAM KIM CHYE & ANOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J.
(Singapore), Mathew, C.J. (F.M.) and Brown, J.)
November 11, 1952]

[Singapore — Civil Appeal No. 17 of 1952]

Damages — Loss of expectation of life — Pain and suffering.

This appeal raises the question whether or not the damages of \$4,000 awarded for loss of expectation of life and of \$2,000 for pain and suffering were excessive. The deceased was killed in an accident and suffered pain for nearly 3 days before his death.

Held: (1) The directions laid down in *Benham v. Gambling*⁽¹⁾ have resulted in the awarding of modest but arbitrary sums for loss of expectation of life. There is no logical reason why one sum should be awarded more than another, and it is impossible to say logically that any figure is wrong. But the awarding of large sums was found to have practical inconveniences. In this case, having in mind the fall of the value of money since that case, the sum awarded is not manifestly excessive; (2) it is wrong to treat damages for pain and suffering as analogous to that for loss of expectation of life. The sum awarded for the former should be the same as would have been awarded if the deceased had recovered. Here the deceased suffered a substantial amount of pain and suffering.

Per Brown, J. (dissenting): the onus is on the claimant to prove pain and suffering.

Cases referred to:—

- (1) *Benham v. Gambling* (1941) 1 All E.R. 7.
- (2) *Rose v. Ford* (1937) 3 All E.R. 359.
- (3) *Mills v. Stanway Coaches* (1940) 2 All E.R. 586.

COURT OF APPEAL, appeal from the decision of Knight, J., reported, *ante*, at p. 168.

L. A. J. Smith for the appellant.

Chong Thutt Pitt for the respondents.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J.: — This was an appeal by the defendant concerning damages only, which arose out of an accident in which the deceased was killed. The damages awarded come under three heads. Under special damages there is a sum awarded for costs of Letters of Administration. This item seems to have been uncontested in the Court below and we do not think we ought to interfere. Otherwise there was a sum of \$4,000 awarded for loss of expectation of life. This is a matter which it is impossible to assess satisfactorily. The House of Lords in *Benham v. Gambling*⁽¹⁾, have laid down certain directions which have resulted in the awarding of modest but arbitrary sums. There is no logical reason why one sum should be awarded more than another, and it is impossible to say that any figure is wrong, viewing the matter from a purely logical basis. However, the awarding of large sums under this head was found to have practical inconveniences. Compared with the sum awarded in *Benham v. Gambling*⁽¹⁾ the present sum is on the high side, but bearing in mind that the value of money has fallen very much since that case was decided, I do not think that the sum awarded is manifestly excessive.

As regards pain and suffering, the position is different. I think that the fact that the deceased died is immaterial. The sum awarded should, I think, be the same as would have been awarded if the deceased had recovered. Certain decisions of the Court of Appeal seem to have treated the matter as analogous to loss of expectation of life. I think that this is wrong and that to award almost nominal damages is contrary to the terms of the statute. I do not think that the observation of the House of Lords in *Benham v. Gambling*⁽¹⁾ apply to these cases. Here the deceased suffered a substantial amount of pain and suffering. I cannot say that the amount awarded is excessive.

Mathew, C.J., (F.M.): — I have had the advantage of reading the judgment of the learned President in this appeal with which I agree.

As regards the damages for pain and suffering, they are perhaps on the high side by standards accepted in England where there is a tendency to award purely nominal damages under this head, the reason being that it is not the man who is injured who receives the compensation. The clear intention of the legislature has, in my view, been negatived to a great extent by judicial decision. The injuries that the deceased suffered in this case were shocking, and he must have been in very considerable pain. I do not consider that the award of \$2,000 is so high as to require interference by this Court.